

REMARKS

At the outset, the Examiner is thanked for the thorough review and consideration of the pending application. The Office Action dated May 27, 2009, has been received and its contents carefully reviewed.

Claim 50 is hereby amended. No claims have been added or canceled. Accordingly, claims 1-62 are pending for prosecution on the merits. Applicants respectfully request reexamination and reconsideration of the pending claims.

I. Rejection under 35 U.S.C. § 102(b)

The Office has rejected claims 1-3, 10-18, 25-32, 40-43 and 50-72 under 35 U.S.C. § 102(b) as being anticipated by U.S. Patent No. 5,755,068 to Ormiston (hereinafter *Ormiston*). Office Action p. 2.

First regarding independent claims 1 and 16, Applicant respectfully traverses the rejection and asserts that *Ormiston* wholly fails to anticipate a flooring system comprising at least, “a plurality of edge patterns... at least one bulk pattern arranged adjacent the plurality of edge patterns and proximate at least one second portion of the perimeter, wherein elements of at least one bulk pattern and elements of an edge pattern adjacent the at least one bulk pattern correspond in location and orientation to form a substantially continuous pattern across the bulk pattern and the edge pattern adjacent the at least one bulk pattern,” as recited in independent claim 1 and as similarly recited in 16.

The Office asserts that *Ormiston* discloses “at least one bulk pattern 18k arranged adjacent the plurality of edge patterns 30k... wherein elements of at least one bulk pattern 18K and elements of an edge pattern 30K adjacent the at least one bulk pattern 18K correspond in location and orientation to form a substantially continuous pattern across the bulk pattern and the edge pattern adjacent the at least one bulk pattern.” Office Action at p. 2. Applicant respectfully, but strongly, disagrees with the Office’s reading of *Ormiston*. The Office sets forth the above-recited assertions with little explanation as to how they are anticipated by *Ormiston*. Applicant asserts that *Ormiston* wholly fails to anticipate the claimed invention for at least the following reasons.

Portions 30k, which the Office asserts read on the claimed “edge patterns,” are actually “longitudinally extending parallel grooves 30 extending in parallel relation to each other to define a plurality of rows 32.” *Ormiston* at col. 4, ll. 27-29. The grooves 30 act to define the plurality of rows 32, as viewed in at least FIG. 3, by acting as seams between the rows 32 in conjunction with transverse grooves 34. For example, *Ormiston* further teaches, “[t]ransverse grooves 34 extend between longitudinal grooves 30 and are staggered to simulate a plurality of separate wood boards.” *Id.* at col. 4, ll. 42-44. It is, therefore, the discontinuity between the pattern shown on groove surface 30K and the pattern on surface 18K, which enables *Ormiston* to create the desired effect of his invention, i.e. a single plank having the appearance of separate wood boards. Thus, *Ormiston* actually teaches away from a continuous pattern between 30K and 18K.

Further, as noted in the previous Response to Office Action, filed February 23, 2009, grooves 30 are formed in base or core layer 16 as they, “extend through veneer level 18 into base layer 16.” *Ormiston* at col. 4, ll. 30-31. The base layer 16 is “preferably formed of pressed board or fiberboard material of wood fibers which may include resin.” *Id.* at col. 3, ll. 45-49. Therefore the surface of half groove 30k will take on the appearance of the material of the base layer 16, i.e. pressed fiber board. See *Ormiston* at FIGs. 2, 3-6, 11, 14, and 15. Portion 18k is a veneer layer comprised of an outer resin impregnated sheet (*Id.* at col. 7, ll. 11-12), which “may be provided with lines to simulate grooves and wood grain on the outer surface,” (*Id.* at col. 6, ll. 52-61).

As seen in FIG. 15, the impregnated sheet of veneer layer 18k does not extend over any portion of half groove 30k. Therefore, while the surface of 18k will have the appearance of whatever pattern is chosen for the impregnated sheet, as described by *Ormiston* above, the half groove will have the appearance of the pressed board material of base layer 16. These two patterns are substantially different, and therefore the Office wholly fails to show how *Ormiston* discloses, “elements of at least one bulk pattern and elements of an edge pattern adjacent the at least one bulk pattern correspond in location and orientation to form a substantially continuous pattern across the bulk pattern and the edge pattern adjacent the at least one bulk pattern,” as recited in independent claim 1 and as similarly recited in 16.

Regarding independent claim 50, as admitted by the Office (Office Action at p. 13, ¶ 4), *Ormiston* fails to disclose, “laminated flooring system, comprising...a rectangular shape having first and second short sides and first and second long sides, the rectangular shape having a first and second row of strips, wherein the first and second rows have the same length and are aligned with each other such that a portion of the outer edges of the first and second rows cooperatively define a perimeter of the rectangular shape,” as recited in claim 50.

Finally, regarding claims 40-43, Applicant notes that the claims are dependent upon independent claim 33, which is not included in the above rejection under 35 U.S.C. § 102(b). Therefore, the rejection of these claims is improper. Claims 40-43 will thus be treated as being rejected under 35 U.S.C. § 103(a), similarly to claim 33, to which they depend.

Accordingly, Applicant respectfully asserts that claims 1, 16, and 50 are allowable over *Ormiston*. Claims 2, 3, 10-15, 17, 25-32, and 51-62 are also allowable as being dependent upon allowable independent claims 1, 16, or 50 respectively. Applicants therefore request withdrawal of the rejection under 35 U.S.C. § 102(b) of claims 1-3, 10-18, 25-33, and 50-62.

II. Rejections under 35 U.S.C. § 103(a)

The Office has rejected claims 4-7, 19-23, and 33-37 under 35 U.S.C. § 103(a) as being anticipated *Ormiston* in view of U.S. Patent No. 1,854,933 to Hartman et al. (hereinafter *Hartman*). Office Action p. 9.

Applicant respectfully traverses the rejection and asserts, as discussed above with respect to claims 1 and 16, that *Ormiston* wholly fails to anticipate a flooring system comprising at least, “a plurality of edge patterns... at least one bulk pattern arranged adjacent the plurality of edge patterns and proximate at least one second portion of the perimeter, wherein elements of at least one bulk pattern and elements of an edge pattern adjacent the at least one bulk pattern correspond in location and orientation to form a substantially continuous pattern across the bulk pattern and the edge pattern adjacent the at least one bulk pattern,” as recited in independent claim 1 and as similarly recited in 16. *Hartman* fails to cure the deficiencies of *Ormiston*.

Regarding claim 33, Applicant respectfully asserts that *Ormiston* fails to disclose a flooring system comprising “an edge pattern [and]... a bulk pattern... wherein at least a portion of the edge patterns are substantially coplanar with the bulk pattern,” as recited in independent claim 33. The Office asserts that “[o]ne could say that *Ormiston* discloses at least a portion of the edge patterns 30 K are substantially coplanar with the bulk pattern: Because it is unclear as to what constitutes/defines the meets and bounds of the term ‘substantially.’” (emphasis in original) Office Action at p. 11. Applicant respectfully disagrees. As can be clearly seen in FIG. 15 of *Ormiston*, the surface of half groove 30k is entirely recessed below veneer layer 18. One of ordinary skill in the art would readily recognize that these two surfaces are not coplanar.

The Office then attempts to modify *Ormiston* with a purported disclosure by *Hartman* of an edge pattern 17 being substantially coplanar with a bulk pattern. Applicant, however, asserts that *Hartman* fails to teach the edge pattern being “substantially coplanar” with a bulk pattern. In fact, *Hartman* actually discusses how the different heights of surfaces 16, 17 and 18 contribute to the ornamental appearance of the flooring. *Hartman* at p.2, l. 109 through p. 3, l. 12.

More specifically, *Hartman* positively discloses that the “portions of the units [are] pressed to different thicknesses whereby one portion stands in relief above another portion.” *Id.* at p. 3, ll. 119-122. *Hartman* further teaches that “[t]he ornamental effect which is produced simulates a flooring made of slates and stones where the irregularities are represented by... the difference in height of the various components of the pattern.” *Id.* at p.2, l. 130 through p. 3, l. 6. Thus, it is the non-coplanar relationship between the different portions 16, 17 and 18 which acts to define the ornamental design of the flooring. *Id.* One of ordinary skill in the art would not find the different surfaces of portions 16, 17, and 18 to be “substantially coplanar,” as the Office suggests. Therefore, *Ormiston* and *Hartman* fail, alone or in combination, to disclose the claimed invention.

Accordingly, Applicant respectfully asserts that claims 1, 16, and 33 are allowable over *Ormiston* in view of *Hartman*. Claims 4-7, 19-23, and 34-37 are also allowable as being dependent upon allowable independent claims 1, 16, or 33 respectively. Applicant therefore requests withdrawal of the rejection under 35 U.S.C. § 103(a) of claims 4-7, 19-23, and 33-37.

The Office has rejected claims 8, 9, 24, 38-39, and 44-49, under 35 U.S.C. § 103(a) as being anticipated *Ormiston* in view of U.S. Patent No. 4,299,069 to Neumann (hereinafter *Neumann*). Office Action p. 9.

Applicant respectfully traverses the rejection and asserts, as discussed above with respect to claims 1 and 16, that *Ormiston* wholly fails to anticipate a flooring system comprising at least, “a plurality of edge patterns... at least one bulk pattern arranged adjacent the plurality of edge patterns and proximate at least one second portion of the perimeter, wherein elements of at least one bulk pattern and elements of an edge pattern adjacent the at least one bulk pattern correspond in location and orientation to form a substantially continuous pattern across the bulk pattern and the edge pattern adjacent the at least one bulk pattern,” as recited in independent claim 1 and as similarly recited in 16. Further, Applicants respectfully assert, as discussed above, that *Ormiston* fails to disclose a flooring system comprising “an edge pattern [and]... a bulk pattern... wherein at least a portion of the edge patterns are substantially coplanar with the bulk pattern,” as recited in independent claim 33. *Neumann* fails to cure the above-discussed deficiencies of *Ormiston*.

Regarding claim 44, Applicant respectfully traverses the rejection and asserts that *Ormiston* fails to disclose a flooring system comprising, “a rectangular shape having first and second short sides and first and second long sides; the rectangular shape having a first row and a second rows of strips, wherein the first and second rows have the same length as each other and are aligned with each other such that a portion of the outer edges of the first and second rows cooperatively define a perimeter of the rectangular shape,” as recited in independent claim 44.

The Office admits that *Ormiston* fails to disclose that “the first and second rows are aligned with each other such that a portion of the outer edges of the first and second rows cooperatively define a perimeter of the rectangular shape.” Office Action at p. 13, ¶ 4. The Office attempts to cure the admitted deficiency with a purported teaching in *Neumann* of aligned rows. *Neumann*, however, contains the same admitted deficiencies as *Ormiston*, and therefore fails to teach or suggest the claimed invention for the same reasons as *Ormiston*.

More specifically, the Office points to FIG. 1 of *Neumann* for the purported teaching of aligned rows, however, as can be clearly seen in FIG. 1, each row is offset from one another defining an odd-shaped plank 20. To support this assertion, the Office reproduces FIG. 1 of

Neumann in the Office Action at p. 14, and draws a rectangular shape around the exterior of *Neumann*'s odd shaped plank, asserting that this satisfies the limitations of the claim. This assertion goes too far.

Applicant points out that the Office could similarly draw a rectangle around a circle. However, just because you can draw a rectangle around a non-rectangular object, it does not immediately follow that such an object discloses, "wherein the first and second rows have the same length as each other and are aligned with each other such that a portion of the outer edges of the first and second rows cooperatively define a perimeter of the rectangular shape," as recited in independent claim 44. *Nuemann* is wholly inadequate in teaching the claimed invention, similar to *Ormiston*'s admitted failure, since both show planks having offset rows defining an odd-shaped exterior.

Accordingly, Applicant respectfully asserts that claims 1, 16, 33 and 44 are allowable over *Ormiston* in view of *Neumann*. Claims 8, 9, 24, 38, 39, and 43-49 are also allowable as being dependent upon allowable independent claims 1, 16, or 33 respectively. Applicants therefore request withdrawal of the rejection under 35 U.S.C. § 103(a) of claims 8, 9, 24, 38, 39, and 44-49.

CONCLUSION

If for any reason the Examiner finds the application other than in condition for allowance, the Examiner is requested to call the undersigned attorney at (202) 496-7500 to discuss the steps necessary for placing the application in condition for allowance. All correspondence should continue to be sent to the below-listed address.

If these papers are not considered timely filed by the Patent and Trademark Office, then a petition is hereby made under 37 C.F.R. § 1.136, and any additional fees required under 37 C.F.R. § 1.136 for any necessary extension of time, or any other fees required to complete the

filing of this response, may be charged to Deposit Account No. 50-0911. Please credit any overpayment to deposit Account No. 50-0911.

Respectfully submitted,

Dated: August 27, 2009

By

A handwritten signature in black ink, appearing to read "Eric / Mur / 40, 106", is written over a horizontal line.

Rebecca G. Rudich

Registration No. 41,786

McKENNA LONG & ALDRIDGE LLP

1900 K Street, N.W.

Washington, DC 20006

(202) 496-7500

Attorneys for Applicant